CLAIM IN RESPECT OF A POSSESSORY TITLE TO LAND RESUMED BY THE CROWN. — The English Privy Council recently decided that one who had had adverse possession of land for ten years acquired such an interest that, when the crown resumed the land as if by eminent domain, his executors, as soon as the period of limitation had run after his entry, might require the land to be valued with a view to compensation. *Perry* v. *Clissold*, [1907] A. C. 73. Since the original owner was by that time surely barred under the English rule allowing adverse possession to be tacked even between successive disseisors,[1] and since the valuation was to be of the whole fee as of the time of resumption, there is an inference — supported by another case[2] — that the executors would recover the whole value. On the one hand, this case does not purport to require compensation for a right in the land acquired — if such a thing be possible — after the state's title accrued. Such reasoning would oppose the general rule that a subsequent grantee[3] or heir[4] of one whose land is taken acquires no right to compensation, which is a personal claim. And by way of analogy, a claimant of government land who has no adverse possession, but merely an expectation of staying on the land to obtain a grant of title, is recompensed only according to the probability of the fulfilment of his expectation.[5] On the other hand, the court found in the resumption act under which the land was taken no authority given to the crown to enter under the absent owner in such a way as to disturb, as the owner could, any present vested right of the trespasser. This accords with the idea that the title taken by the state is not one of privity.[6] Since, then, the adverse possessor acquired no new right in the land after it was taken, and since the crown did not take under the former owner, the question is, what is the vested right of an adverse possessor?

Two series of articles,[7] relied on by the court in defining this right, point out that originally at common law possession was protected against ownership. Then very early a disseisee was given a right to enter or gain back possession from his disseisor. This right was a mere chose in action, at first absolutely non-transferable and good only against the disseisor himself. It was founded simply on former possession and ouster. But the possession of the disseisor — the tangible thing — was the property, — transferable, inheritable, devisable, giving dower and curtesy, subject to execution and escheat. Possession with no outstanding rights to take it away made a complete ownership. The right to get back possession is now generally transferable and follows the land against most possessors. It is so extensive that today a possessor who is free from such a right outstanding against him is commonly thought to have in himself, in addition to his possession, a valuable abstract right called title. This change in point of view, this turning of the absence of outstanding rights into the presence of an affirmative title, should not, logically, change the nature of the right of possession when the possessor is dealing with strangers to outstanding rights. As against all who have no outstanding rights, the possessor should have

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[1] See Willis *v.* Earl Howe, [1893] 2 Ch. 545.
[2] See *In re* Harris, [1901] 1 Ch. 931.
[3] Patten *v.* Fitz, 138 Mass. 456.
[4] Moore *v.* City of Boston, 8 Cush. (Mass.) 274.
[5] Elsworth, etc., Ry. Co. *v.* Gates, 41 Kan. 574. But see Spokane, etc., Ry. Co. *v.* Ziegler, 167 U. S. 65.
[6] See Emery *v.* Boston Terminal Co., 178 Mass. 172.
[7] Prof. Maitland in 1 L. Quar. Rev. 324; 2 *ibid.* 481; 4 *ibid.* 24, 286; Prof. Ames in 3 HARV. L. REV. 23, 313, 337.

the ownership. This proprietary character of possession appears today in cases allowing an adverse possessor to maintain ejectment — a proprietary action — against any one not claiming under the outstanding title.[8] It is further supported by a few cases like the present. The adverse possessor whose land is taken loses, as between himself and the state, not the mere expectancy of a property right, but one already in existence, for which logically he should have full recompense at once.[9] Practically, however, to protect the state and the outstanding right of the former owner, it is better to have the money paid into court, the income and eventually the principal [2] to be paid to the adverse possessor unless the original owner appears before he is barred.[10] It is immaterial how long the adverse possession has lasted,[11] or whether it began in a wrongful entry,[2] but it must be more than the possession of a tenant, even though the landlord does not appear.[12]

EQUITABLE ESTOPPEL OF MUNICIPAL CORPORATIONS. — Cases occasionally arise the peculiar hardship of which pleads for a doctrine of equitable estoppel against municipal corporations which are asserting a right or setting up a defense based on the ground that they have acted *ultra vires*. The general rule, however, is well settled that, while a municipal corporation can be estopped from asserting an irregular exercise of corporate power, it cannot be estopped from asserting a lack of power. The reason for allowing the privilege is hardly because, as is sometimes said, the corporation is but a trustee for the inhabitants, for acquiescence by the latter in the *ultra vires* act will not estop them,[1] though acquiescence in a trustee's breach of trust estops a *cestui*. Nor can the suggestion [2] that the corporation is the agent of the inhabitants, binding them by wrongful acts within its powers but not by acts wholly beyond its powers, be pressed far; for the inhabitants can never ratify, as can an ordinary principal, an act done wholly in excess of authority.[3] Rather, the reason is the strong public policy of restraining these corporate powers strictly within their grant. This is founded on the vital consideration of the necessity of saving municipalities from fraud and ruin, induced by the misconduct of corrupt officials.

Several classes of cases, however, which seem exceptions, must be carefully distinguished. Often it is not clear whether the corporation has exceeded its powers or only abused them. This is frequently the case with municipal bonds. But where the decisions seem contrary to the general rule it will usually appear that some sort of power to issue can be found, in which case irregularities in its exercise cannot be urged against a holder for value.[4] Also, while a municipality may not be liable on a contract *ultra vires* as framed, yet, if it has accepted benefits under the contract which are

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[8] Asher *v.* Whitlock, L. R. 1 Q. B. 1. *Contra*, Doe d. Carter *v.* Barnard, 13 Q. B. 945.

[9] See Andrew *v.* Nantasket Beach Ry. Co., 152 Mass. 506.

[10] *In re* Loder, 19 N. S. W. Eq. 41.

[11] See Geyde *v.* Commissioner of Public Works, [1891] 2 Ch. 630.

[12] Geyde *v.* Commissioner of Public Works, *supra*.

[1] Ottawa *v.* Carey, 108 U. S. 110; McPherson *v.* Foster Bros., 43 Ia. 48.

[2] See Schumm *v.* Seymour, 24 N. J. Eq. 143, 154, 155; Halbut *v.* Forest City, 34 Ark. 246.

[3] Lewis *v.* Shreveport, 108 U. S. 282.

[4] Marcy *v.* Oswego, 92 U. S. 637.